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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARIA SANTIAGO et al.,

Plaintiffs and Respondents,

v.

KIA MOTORS AMERICA, INC.,

Defendant and Appellant.

G030633

(Super. Ct. No. 01CC01438)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Stuart T. Waldrip, Judge. Appeal dismissed.

Lewis, D'Amato, Brisbois & Bisgaard, Gary M. Lape, Roger L. Bellows and Michael M. Vasseghi for Defendant and Appellant.

Spector, Roseman & Kodroff, James A. Caputo, Arthur L. Shingler III, Jennifer Daniel-Duckering; Kemnitzer, Anderson, Barron & Ogilvie, Mark F. Anderson, Carol McLean Brewer; Milberg, Weiss, Bershad, Hynes & Lerach and William S. Dato for Plaintiffs and Respondents.

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This is a class action in which Kia Motors has been sued for an allegedly defective braking system on its Sephia models. Kia brought a motion to dismiss or otherwise stay the proceedings on the theory that the National Highway Traffic and Safety Administration has primary jurisdiction over the plaintiffs' claims. The motion was denied and Kia has filed this purported appeal from the order of denial.

We must now dismiss the appeal. There is no statutory basis for it. It is not, as Kia claims, justified by Code of Civil Procedure section 904.1, subdivision (a)(6), which makes denials of requested injunctions appealable. Injunctions are sought against *parties*, not *courts*. A stay order is not, substantively, an injunction. If Kia's (rather expansive) definition were correct, every request to dismiss a case in the trial court would be appealable as the denial of an injunction, on the theory that the request sought an order preventing the court from further processing the case. The theory has also been tried before and rejected. (See *Bailey v. Fosca Oil Co., Ltd.* (1962) 211 Cal.App.2d 307, 308 ["an order staying proceedings in the same action is not an appealable order"].)

Nor can the appeal be saved under the theory that the denial of the dismissal and stay orders concerns a collateral matter. Dismissing or staying a case is not collateral to the main issue -- it *is* the main issue. Nothing in the denial orders forces Kia to make a monetary payment (as happens, in say, family law cases where pendente lite support orders are appealable) or perform an act other than to continue participating in the litigation process, and that doesn't count.

The matter is hereby dismissed. Respondents will recover their costs in this proceeding.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

O'LEARY, J.